

HOUSE BILL 1163

M2, M3

2lr1751

By: **Delegates Jacobs, Fisher, Hershey, and Norman**

Introduced and read first time: February 10, 2012

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Environment – Penalty for Sewage Overflow – Establishment and**
3 **Distribution**

4 FOR the purpose of requiring the Department of the Environment to impose a civil
5 penalty on certain persons for any sewage overflow or bypass that results in the
6 discharge of raw or diluted sewage into the waters of the State; establishing a
7 formula to determine the amount of the civil penalty; authorizing the
8 Department to retain certain proceeds from the civil penalties to cover certain
9 administrative expenses; requiring the Department to distribute certain
10 proceeds from the civil penalties to the Fisheries Research and Development
11 Fund for certain use; requiring the Department to adopt certain regulations;
12 authorizing the receipt by the Fund of proceeds from the civil penalties; and
13 generally relating to the establishment and distribution of civil penalties for a
14 sewage overflow or bypass.

15 BY repealing and reenacting, without amendments,
16 Article – Environment
17 Section 9–331.1(a)
18 Annotated Code of Maryland
19 (2007 Replacement Volume and 2011 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – Environment
22 Section 9–342
23 Annotated Code of Maryland
24 (2007 Replacement Volume and 2011 Supplement)

25 BY repealing and reenacting, with amendments,
26 Article – Natural Resources
27 Section 4–209
28 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2005 Replacement Volume and 2011 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Environment

9–331.1.

(a) (1) The owner or operator of any sanitary sewer system, combined sewer system, or wastewater treatment plant shall report to the Department any sewer overflow or treatment plant bypass that results in the direct or potential discharge of raw or diluted sewage into the surface waters or groundwaters of the State.

(2) The report shall be made by telephone as soon as practicable but no later than 24 hours after the time that the operator or owner became aware of the event.

(3) Within 5 calendar days after the telephone notification of the event, the owner or operator shall provide the Department with a written report regarding the incident that includes any information required by the Department.

9–342.

(a) In addition to being subject to an injunctive action under this subtitle, a person who violates any provision of this subtitle or of any rule, regulation, order, or permit adopted or issued under this subtitle is liable to a civil penalty not exceeding \$10,000, to be collected in a civil action brought by the Department. Each day a violation occurs is a separate violation under this subsection.

(b) (1) In addition to any other remedies available at law or in equity and after an opportunity for a hearing which may be waived in writing by the person accused of a violation, the Department may impose a penalty for violation of any provision of this subtitle or any rule, regulation, order, or permit adopted or issued under this subtitle.

(2) The penalty imposed on a person under this subsection shall be:

(i) Up to \$5,000 for each violation, but not exceeding \$50,000 total; and

(ii) Assessed with consideration given to:

1. The willfulness of the violation, the extent to which the existence of the violation was known to but uncorrected by the violator, and the extent to which the violator exercised reasonable care;

1 2. Any actual harm to the environment or to human
2 health, including injury to or impairment of the use of the waters of this State or the
3 natural resources of this State;

4 3. The cost of cleanup and the cost of restoration of
5 natural resources;

6 4. The nature and degree of injury to or interference
7 with general welfare, health, and property;

8 5. The extent to which the location of the violation,
9 including location near waters of this State or areas of human population, creates the
10 potential for harm to the environment or to human health or safety;

11 6. The available technology and economic
12 reasonableness of controlling, reducing, or eliminating the violation;

13 7. The degree of hazard posed by the particular
14 pollutant or pollutants involved; and

15 8. The extent to which the current violation is part of a
16 recurrent pattern of the same or similar type of violation committed by the violator.

17 (3) Each day a violation occurs is a separate violation under this
18 subsection.

19 (4) Any penalty imposed under this subsection is payable to this State
20 and collectible in any manner provided at law for the collection of debts.

21 (5) If any person who is liable to pay a penalty imposed under this
22 subsection fails to pay it after demand, the amount, together with interest and any
23 costs that may accrue, shall be:

24 (i) A lien in favor of this State on any property, real or
25 personal, of the person; and

26 (ii) Recorded in the office of the clerk of court for the county in
27 which the property is located.

28 (6) Any penalty collected under this subsection shall be placed in a
29 special fund to be used for monitoring and surveillance by the Department to assure
30 and maintain an adequate record of any violations, including discharge of waste
31 material and other pollutants into the waters of this State or into the environment.

32 **(C) (1) THE DEPARTMENT SHALL IMPOSE A CIVIL PENALTY ON AN**
33 **OWNER OR OPERATOR OF A SANITARY SEWER SYSTEM, COMBINED SEWER**

1 SYSTEM, OR WASTEWATER TREATMENT PLANT FOR ANY SEWAGE OVERFLOW OR
2 BYPASS THAT RESULTS IN THE DISCHARGE OF RAW OR DILUTED SEWAGE INTO
3 THE WATERS OF THE STATE.

4 (2) A CIVIL PENALTY UNDER THIS SUBSECTION SHALL BE IN THE
5 AMOUNT OF \$0.009 TIMES THE NUMBER OF GALLONS OF RAW OR DILUTED
6 SEWAGE DISCHARGED.

7 (3) FROM THE PROCEEDS OF CIVIL PENALTIES COLLECTED
8 UNDER THIS SUBSECTION, THE DEPARTMENT:

9 (I) MAY RETAIN AN AMOUNT FOR ADMINISTRATIVE
10 EXPENSES DIRECTLY RELATED TO IMPLEMENTING THIS SUBSECTION THAT IS
11 CALCULATED UNDER A GENERALLY ACCEPTED METHODOLOGY; AND

12 (II) SHALL DISTRIBUTE THE REMAINDER TO THE FISHERIES
13 RESEARCH AND DEVELOPMENT FUND ESTABLISHED UNDER § 4-209 OF THE
14 NATURAL RESOURCES ARTICLE TO BE USED ONLY FOR OYSTER RESTORATION
15 PURPOSES.

16 (4) THE DEPARTMENT SHALL ADOPT REGULATIONS TO
17 IMPLEMENT THIS SUBSECTION, INCLUDING REGULATIONS ESTABLISHING A
18 MINIMUM SEWAGE DISCHARGE THAT SUBJECTS AN OWNER OR OPERATOR TO
19 CIVIL LIABILITY UNDER THIS SUBSECTION.

20 Article – Natural Resources

21 4-209.

22 (a) In this section, “Fund” means the Fisheries Research and Development
23 Fund.

24 (b) There is a Fisheries Research and Development Fund in the Department.

25 (c) The purpose of the Fund is to:

26 (1) Finance the replenishment of fisheries resources and related
27 research; and

28 (2) Match federal funds available for research and development of
29 fisheries resources.

30 (d) The Department shall administer the Fund.

1 (e) (1) The Fund is a special, nonlapsing fund that is not subject to §
2 7-302 of the State Finance and Procurement Article.

3 (2) The Treasurer shall hold the Fund separately and the Comptroller
4 shall account for the Fund.

5 (f) The Fund consists of:

6 (1) Any money received under this title for:

7 (i) Commercial licenses and permits;

8 (ii) Service fees, taxes, and royalties paid to the State for oyster
9 shells and clam shells removed from the bottom beneath the tidal waters of the State;

10 (iii) The sale of seed oysters under § 4-1103 of this title; and

11 (iv) Any fine or forfeiture collected under § 4-1202 of this title;

12 (2) **ANY PROCEEDS RECEIVED FROM CIVIL PENALTIES IMPOSED**
13 **FOR THE DISCHARGE OF RAW OR DILUTED SEWAGE INTO THE WATERS OF THE**
14 **STATE UNDER § 9-342 OF THE ENVIRONMENT ARTICLE TO BE USED ONLY FOR**
15 **OYSTER RESTORATION PURPOSES;**

16 (3) Any investment earnings of the Fund;

17 [(3)] (4) Money received from any other source; and

18 [(4)] (5) Money appropriated from the General Fund of the State in
19 accordance with subsection (j) of this section.

20 (g) Subject to §§ 4-701(o), 4-1020, 4-1028, and 4-1035 of this title, the Fund
21 may be used for:

22 (1) Replenishing fisheries resources and related research;

23 (2) Matching federal funds available for research and development of
24 fisheries resources; and

25 (3) Administrative costs calculated in accordance with § 1-103(b)(2) of
26 this article.

27 (h) (1) The Treasurer shall invest the money of the Fund in the same
28 manner as other State money may be invested.

1 (2) Any investment earnings of the Fund may not be transferred or
2 revert to the General Fund of the State, but shall remain in the Fund.

3 (i) Expenditures from the Fund may be made only in accordance with the
4 State budget.

5 (j) Beginning with fiscal year 2009 and each fiscal year thereafter, the
6 Governor may include in the budget bill an appropriation from the General Fund for
7 the Fund.

8 (k) The Governor shall include in the budget bill for each fiscal year a
9 General Fund appropriation to the Fisheries Research and Development Fund of not
10 less than \$1,794,000.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2012.